

F I L E D

Clerk of the Superior Court

MAR 06 2007

By: K SANDOVAL, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

Coordination Proceeding
Special Title (Rule 1550(b));

JUDICIAL COUNCIL COORDINATION
PROCEEDING NOS. 4221, 4224, 4226 and
4228

The Honorable Ronald S. Prager
Coordination Trial Judge

**NATURAL GAS ANTI-TRUST CASES I,
II, III & IV**

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENTS**

Date: March 6, 2007
Time: 10:00 a.m.
Courtroom: Dept. 71

This Document Relates To:

THE PRICE INDEXING CASES ONLY

1 WHEREAS, Plaintiffs' Co-Lead Counsel, on behalf of Plaintiffs and the proposed Class,
2 and defendants Reliant Energy Services, Inc., Duke Energy Trading and Marketing LLC, CMS
3 Energy Resources Management Company, and Aquila Merchant Services, Inc. (all collectively,
4 "Settling Defendants") have entered into Settlement Agreements intended to resolve this litigation
5 against the Settling Defendants and their respective affiliates;

6 WHEREAS, the Settlement Agreements set forth the terms and conditions for the
7 proposed settlements and dismissals of actions against the Settling Defendants and their
8 respective affiliates, with prejudice, upon the terms and conditions set forth therein;

9 WHEREAS, the Court has before it Plaintiffs' Motion for Preliminary Approval of Class
10 Action Settlements and Plaintiffs' Memorandum of Points and Authorities in Support of Motion
11 for Preliminary Approval of Class Action Settlements, together with supporting materials;

12 WHEREAS, all parties have stipulated that there shall be no opposition to the preliminary
13 approval motion;

14 WHEREAS, the Court is satisfied that the settlements set forth in each of the Settlement
15 Agreements are the result of good faith, arm's-length settlement negotiations among competent
16 and experienced counsel for both the Plaintiffs and the Settling Defendants; and

17 WHEREAS, the Court has conducted a hearing concerning the reasonableness of
18 proceeding with the proposed settlements, and good cause appearing therefore, now finds and
19 orders as follows:

20 **Preliminary Approval of Settlements and**
21 **Conditional Certification of the Settlement Classes**

22 1. Terms used in this Order have the meanings assigned to them in the
23 Settlement Agreements and this Order.

24 2. The provisions of the Settlement Agreements are hereby preliminarily
25 approved, subject to further consideration thereof at the Fairness Hearing provided for below.
26 The Court finds that each settlement is sufficiently within the range of reasonableness that notice
27 of the proposed settlements should be given as provided in paragraphs 7-10 of this Order.
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1 3. Pursuant to California Code of Civil Procedure Section 382, the Court
2 hereby conditionally certifies the following Settlement Class, defined as:

3 All individuals and entities in the State of California who between
4 January 1, 1999 and December 31, 2002, inclusive (the "Class
5 Period"), purchased natural gas in California for use. Excluded
6 from the Class are: individuals and entities who purchased natural
7 gas for resale or for generation of electricity for the purpose of
8 resale (to the extent of such purchases); Defendants and their
9 predecessors, affiliates, subsidiaries, officers, and directors; federal,
10 state and local governments and governmental agencies; any and all
11 judges and justices assigned to hear any aspect of this litigation,
12 along with their spouses and any minor children residing in their
13 households; any persons within the third degree of relationship of
14 any judge or justice assigned to hear any aspect of this litigation.

15 The Settlement Class is divided into two subclasses as follows. The Core Natural Gas Subclass is
16 defined as:

17 All individuals and entities that were "core" or "core subscription"
18 natural gas customers of one or more of California's natural gas
19 utilities, including, without limitation, Southern California Gas
20 Company, Pacific Gas & Electric Company, San Diego Gas &
21 Electric Company, City of Long Beach Energy Department, and
22 Southwest Gas Corporation, at any time between January 1, 1999
23 and December 31, 2002.

24 The Non-Core Natural Gas Subclass is defined as:

25 All individuals and entities that were "non-core" natural gas
26 customers (excluding "core subscription" customers) of one or
27 more of California's natural gas utilities, including, without
28 limitation, Southern California Gas Company, Pacific Gas &
Electric Company, San Diego Gas & Electric Company, City of
Long Beach Energy Department, and Southwest Gas Corporation,
or who otherwise purchased natural gas pursuant to contract, at any
time between January 1, 1999 and December 31, 2002.

1 4. For settlement purposes only, certification of the proposed Settlement
2 Class and Subclasses is appropriate under California Code of Civil Procedure § 382. The Court
3 has considered the pleadings and arguments of Plaintiffs' counsel in support of the motion for
4 preliminary settlement approval, and finds that the Settlement Class and Subclasses are proper
5 and should be conditionally certified, for settlement purposes only, in the circumstances of this
6 case. Specifically, the Court finds that, for settlement purposes only, there is an ascertainable
7 class and a community of interest among the members of the Class and within each of the two
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1 Subclasses. Certification of the Settlement Class and Subclasses for settlement purposes is the
2 best means for protecting the interests of all members of the Class and Subclasses.

3 5. The Court finds for the purposes of settlement only that: (i) the members of
4 the Settlement Class are so numerous that joinder would be impractical; (ii) there is a
5 commonality of interests among the members of the Settlement Class; (iii) there are questions of
6 law and fact that are common to the Settlement Class, and the common questions predominate
7 over individual questions; (iv) plaintiffs' claims are typical of the claims of absent Settlement
8 Class members; and (v) Plaintiffs will fairly and adequately represent the interests of the absent
9 Settlement Class members.

10 6. The Court finds for the purposes of settlement only that: (i) the members of
11 the Core Natural Gas Subclass are so numerous that joinder would be impractical; (ii) there is a
12 commonality of interests among the members of the Core Natural Gas Subclass; (iii) there are
13 questions of law and fact that are common to the Core Natural Gas Subclass, and the common
14 questions predominate over individual questions; (iv) the claims of plaintiffs Mark and Susan
15 Benscheidt, David C. Brown, Lois the Pie Queen, Celina Martinez, Oberti Wholesale Foods, Inc.,
16 Dan L. Older, Shanghai 1930 Restaurant Partners, L.P., Michael and Haleema Silverman, Tom
17 and Lynette Stevenson, Timothy Engeln, Inc. dba Team Design, Laurence Uyeda, and Vittice
18 Corporation are typical of the claims of absent Core Natural Gas Subclass members; and (v) these
19 plaintiffs will fairly and adequately represent the interests of the absent Core Natural Gas
20 Subclass members.

21 7. The Court finds for the purposes of settlement only that: (i) the members of
22 the Non-Core Natural Gas Subclass are so numerous that joinder would be impractical; (ii) there
23 is a commonality of interests among the members of the Non-Core Natural Gas Subclass;
24 (iii) there are questions of law and fact that are common to the Non-Core Natural Gas Subclass,
25 and the common questions predominate over individual questions; (iv) the claims of plaintiffs
26 A.L. Gilbert Company and H&M Roses, Inc. are typical of the claims of absent Non-Core Natural
27 Gas Subclass members; and (v) these plaintiffs will fairly and adequately represent the interests
28 of the absent Non-Core Natural Gas Subclass members.

1 8. The Court conditionally appoints plaintiffs Mark and Susan Benscheidt,
2 David C. Brown, Lois the Pie Queen, Celina Martinez, Oberti Wholesale Foods, Inc., Dan L.
3 Older, Shanghai 1930 Restaurant Partners, L.P., Michael and Haleema Silverman, Tom and
4 Lynette Stevenson, Timothy Engeln, Inc. dba Team Design, Laurence Uyeda and Vittice
5 Corporation as representatives of the Settlement Class and the Core Natural Gas Subclass. The
6 Court further finds that Lieff, Cabraser, Heimann & Bernstein, LLP will adequately represent the
7 interests of the Settlement Class and the Core Natural Gas Subclass, and conditionally appoints
8 the firm to serve as Co-Lead Settlement Class Counsel and Lead Settlement Subclass Counsel for
9 the Core Natural Gas Subclass.

10 9. The Court conditionally appoints plaintiffs A.L. Gilbert Company and
11 H&M Roses, Inc. as representatives of the Settlement Class and the Non-Core Natural Gas
12 Subclass. The Court further finds that Engstrom Lipscom & Lack will adequately represent the
13 interests of the Settlement Class and the Non-Core Natural Gas Subclass, and conditionally
14 appoints the firm to serve as Co-Lead Settlement Class Counsel and Lead Settlement Subclass
15 Counsel for the Non-Core Natural Gas Subclass.

16 10. The Court appoints the members of the Plaintiffs' Executive Committee as
17 additional Settlement Class Counsel:

18 Saveri & Saveri Inc.

19 Girard, Gibbs and De Bartholomeo, LLP

20 Damrell, Nelson, Schrimp, Pollias, Pacher & Silva

21 Zelle, Hoffman, Voebel, Mason & Gette LLP

22 Krause & Kalfayan

23 Jenkins & Mulligan

24 Parish & Small

25 Baker, Burton & Lundy, P.C.

26 Murray & Howard

27 Kiesel, Boucher & Larson

1 11. If the Settlement Agreements are terminated or are not consummated for
2 any reason whatsoever, the conditional certification of the Settlement Class and Subclasses shall
3 be void with respect to any terminated settlement; the Settling Defendant(s) shall have reserved
4 all their rights to oppose any and all class certification motions and to contest the adequacy of the
5 class plaintiffs as representatives of any putative plaintiff class or subclass.

6 **Notice to Settlement Class Members**
7 **and Appointment of the Settlement Administrator**

8 12. On or before April 13, 2007 (the "Notice Date"), Co-Lead Settlement Class
9 Counsel shall cause to be published a notice, substantially in the form attached as Exhibit B to the
10 Declaration of Andrew Novak in Support of Plaintiffs' Motion for Preliminary Approval of
11 Proposed Class Action Settlements ("Novak Declaration") in the publications listed in the Notice
12 Program attached as Exhibit A to the Novak Declaration ("Publication Notice"). Prior to the
13 Fairness Hearing, plaintiffs shall file and serve a sworn statement attesting to compliance with the
14 provisions of this paragraph.

15 13. On or before the Notice Date, the Settlement Administrator (defined
16 below) shall cause copies of the notice, substantially in the form attached as Exhibit C to the
17 Novak Declaration ("Mail Notice") to be mailed by first class U.S. mail, postage pre-paid, to the
18 lists of Non-Core Natural Gas Subclass members provided to the Settlement Administrator by
19 natural gas utilities. The Settlement Administrator shall also cause copies of the Mail Notice to
20 be mailed by first class U.S. mail, postage pre-paid, to any member of the Settlement Class who
21 so requests via the toll-free telephone number established for that purpose. Prior to the Fairness
22 Hearing, the Settlement Administrator shall file and serve a sworn statement attesting to
23 compliance with the provisions of this paragraph.

24 14. In addition, Co-Lead Settlement Class Counsel shall cause to be
25 established a website, identified in the Publication Notice and the Mail Notice, at which shall be
26 posted: (a) the Mail Notice; (b) the Master Class Action Complaint; (c) the Settlement
27 Agreements; (d) this Order; (e) the papers filed in support of final approval of the settlements and
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1 the application for attorneys' fees and reimbursement of expenses; and (f) any other pleadings or
2 papers that Co-Lead Settlement Class Counsel deem appropriate.

3 15. The notice to be provided as set forth in the preceding three paragraphs is
4 hereby found to be the best means practicable of providing notice under the circumstances and,
5 when completed, shall constitute due and sufficient notice of the proposed settlements and the
6 Fairness Hearing to all persons and entities affected by and/or entitled to participate in the
7 settlement approval process, in full compliance with due process and the notice requirements of
8 the California Rules of Court, Rules 1856 and 1859.

9 16. Co-Lead Settlement Class Counsel are authorized to retain Poorman
10 Douglas Corporation as the Settlement Administrator to perform in accordance with the terms of
11 the Settlement Agreements and this Order. The Settlement Administrator shall preserve any and
12 all written communications from members of the Settlement Class until April 1, 2012, subject to
13 further order of the Court. Copies of all written communications received by the Settlement
14 Administrator from members of the Settlement Class relating to the proposed settlements shall
15 promptly be furnished to Co-Lead Settlement Class Counsel and the Settling Defendants.

16 17. All reasonable costs incurred in notifying members of the Settlement Class
17 and Subclasses shall be paid as set forth in the Settlement Agreements.

18 **Requests for Exclusion from the Settlement Class**

19 18. Any member of the Settlement Class wishing to be excluded from the
20 Settlement Class must have postmarked on or before May 18, 2007 (the "Opt-Out Deadline") a
21 request for exclusion addressed to the Settlement Administrator at the address provided in the
22 Mail Notice which states the Class member's name and address, states that the Class member
23 wishes to be excluded from the Settlement Class, and is signed by the Class member. In addition,
24 businesses requesting exclusion must list every address at which they received natural gas service
25 within the State of California between January 1, 1999 and December 31, 2002. For businesses
26 requesting exclusion, the exclusion request must be signed by someone with the legal authority to
27 act for the business, and state that person's name and capacity (e.g., owner, general partner,
28 president).

1 19. Within seven calendar days after the Opt-Out Deadline, the Settlement
2 Administrator shall send via electronic mail or other method approved by the parties to the
3 Settlement Agreements (through their counsel) to Co-Lead Settlement Class Counsel, and counsel
4 for the Settling Defendants, a complete and final list of those persons or entities who have
5 requested exclusion from the Settlement Class, along with copies of all requests for exclusion that
6 have been received.

7 20. Any member of the Settlement Class not properly and timely requesting
8 exclusion from the Settlement Class shall be included in the Settlement Class and in either or both
9 subclasses and, upon final approval of the Settlement Agreements, shall be bound by all the terms
10 and provisions of each Agreement, including but not limited to the releases, waivers and
11 covenants described in the Settlement Agreements, whether or not the class member objected to
12 the settlement and whether or not such person made a claim upon, or participated in, any of the
13 settlement funds created pursuant to the Settlement Agreements.

14 The Fairness Hearing

15 21. A hearing on final settlement approval (the "Fairness Hearing") is hereby
16 scheduled to be held before this Court on June 12, 2007 at 9:15 a.m. in Department 71
17 to consider the fairness, reasonableness, and adequacy of the Settlement Agreements, the entry of
18 final judgment in the Class Actions with respect to the Settling Defendants, and Settlement Class
19 Counsel's application for attorneys' fees and reimbursement of expenses. Briefs and other papers
20 in support of Plaintiffs' motion for final approval and Settlement Class Counsel's application for
21 attorneys' fees shall be filed on or before ^{MAY 9} ~~April 4~~, 2007. Reply briefs and other papers responding
22 to any objections to the proposed settlements and attorneys' fee application shall be filed on or
23 before May 30, 2007.

24 22. Any person who does not elect to be excluded from the Settlement Class
25 may, but need not, enter an appearance through his or her own attorney. Settlement Class
26 members who do not enter an appearance through their own attorneys will be represented by
27 Settlement Class Counsel.
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23. Any person who does not elect to be excluded from the Settlement Class may, but need not, submit comments or objections to the proposed settlement. All such comments or objections and any supporting papers must be filed with the Clerk of the Court, in writing, on or before the Opt-Out Deadline; must contain the caption *Natural Gas Antitrust Cases I-IV, JCCP Nos. 4221, et al.*; and copies of all such papers must be postmarked or otherwise dispatched for delivery to the following on or before the Opt-Out Deadline:

Barry R. Himmelstein
LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
Embarcadero Center West
275 Battery Street, 30th Floor
San Francisco, CA 94111-3339

Plaintiffs' Co-Lead Settlement Class Counsel

- and -

Christopher J. Healey
LUCE, FORWARD, HAMILTON & SCRIPPS LLP
600 West Broadway, Suite 2600
San Diego, CA 92101

Liaison Counsel for the Settling Defendants


24. Attendance at the Fairness Hearing is not necessary; however, persons wishing to be heard at the Fairness Hearing are required to file written comments or objections and indicate in their written comments or objections their intentions to appear at the hearing. Settlement Class members need not appear at the hearing or take any other action to indicate their approval of the settlement.

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1 25. The date and time of the Fairness Hearing shall be set forth in both forms
2 of notice, but shall be subject to adjournment by the Court without further notice to the members
3 of the Settlement Class other than that which may be posted at the Court and at the website
4 established pursuant to the Notice Program.
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6 SO ORDERED, this 6th day of March, 2007.

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9 Hon. Ronald S. Prager
10 Coordination Trial Judge
11 Superior Court of the State of California
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